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No. 84-1681

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

MASTER PRINTERS OF AMERICA,
Petitioner,

v.

RAYMOND J. DONOVAN,
Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER

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STATEMENT OF THE CASE

The Petition for Certiorari by Master Printers of America (MPA) was filed in this case with this Court on April 25, 1985. On July 22, 1985, the United States Court of Appeals for the Eighth Circuit decided the case of *Donovan v. The Rose Law Firm*, 768 F.2d 964 (8th Cir. 1985). The purpose of this Supplemental Brief is to call the Court's attention to the Eighth Circuit's recent decision which interprets Section 203(b) of the LMRDA, the Statute at issue in MPA's Petition for Certiorari.

REASONS FOR GRANTING THE WRIT

In its Petition for Certiorari, MPA set forth as its reasons for granting the Writ in this case that Section 203(b) of the LMRDA as interpreted by the Fourth Circuit, violates the Constitutional Rights of Free Speech and Free Association of MPA and its members and that the Fourth Circuit's Decision was in direct conflict with previous decisions of this Court on these issues. The recent decision of the Eighth Circuit in *Donovan v. The Rose Law Firm*, 768 F.2d 964 (8th Cir. 1985), is based on a far more detailed analysis

of the legislative history of Section 203(b) of the LMRDA than previous circuit court opinions, and finds that this analysis supports a more restrictive interpretation of §203(b) than that espoused by the Fourth Circuit in this case. The Eighth Circuit's interpretation of Section 203(b), applied to the facts of this case, avoids the constitutional infirmities created by the Fourth Circuit's interpretation and raised in the Petition for Certiorari.

Although the Eighth Circuit's reading of Section 203(b) permitted it to avoid constitutional questions, the Court stated as follows:

> The constitutional issues raised by a broader reading of the §203 reporting requirements are certainly not insubstantial. In particular, we have difficulty perceiving the compelling governmental interest to be served by the reporting of all receipts and disbursements related to any labor relations advice given to or services performed for clients for whom a consultant has not performed any persuader activity.

768 F.2d at ___, 119 LRRM at 3353.

This issue is squarely raised in MPA's Petition for Certiorari (*See* Petition for Certiorari, pp. 20-23). Thus, the decision of the Fourth Circuit in this case meets an additional standard for granting writs of certiorari set forth in Rule 17(a) of the Rules of the Supreme Court of the United States in that it is "in conflict with the decision of another federal court of appeals on the same matter."

In *Donovan v. The Rose Law Firm*, 119 LRRM 3345 the issue raised by the facts was whether a law firm which engaged in persuader activity on behalf of one of its clients during the course of an organizational campaign was

required to file an annual disclosure report which encompassed all receipts and disbursements regarding labor relations advice to other clients. The law firm contended first, that the LMRDA only required disclosure of receipts and disbursements with regard to employers for whom persuader activity was performed; second, that to require additional disclosure violated the attorney-client privilege; and third, that additional disclosure violated the First and Fourth Amendment rights of the firm and its clients.

The Eighth Circuit agreed that the LMRDA did not require the additional reports and therefore did not reach the other issues raised by the law firm. In reaching its conclusion the Eighth Circuit reviewed the legislative history carefully and found that previous circuit court opinions had not analyzed the legislative history closely and had misinterpreted it. The Eighth Circuit found, as urged by this Petitioner, that "the chief evil against which Congress hoped to intervene through the use of the consultant reporting requirement was the use of labor consultants who were involved in bribery, corruption and unfair labor practices." 768 F.2d at ___, 119 LRRM at 3347, 3348. The Court held that:

> [T]he annual report required by §203(b) need not cover the services of a consultant by reason of his giving advice to an employer, representing an employer before a court or administrative agency, or engaging in collective bargaining on behalf of an employer, unless the consultant has performed persuader activities for that employer.

768 F.2d at ___, 119 LRRM at 3352.

We urge this Court to grant certiorari in this case and adopt the careful interpretation of §203(b) articulated by the Eight Circuit. In this case, the application of §203(b) is

even farther from the true purpose of the statute than in the case decided by the Eighth Circuit. Here, there is not even a consultant involved in a labor campaign. The so-called persuader activity which the Fourth Circuit found to trigger the reporting requirement was publication of a magazine unrelated to an organizational campaign.

Based on its finding that persuader activity had taken place, the Fourth Circuit required disclosure of receipts and disbursements relating to 5,000 Trade Association members, even though only 929 had employees who received the magazine. This result is neither constitutionally permissible nor dictated by a correct reading of the statute.

CONCLUSION

For the foregoing reasons and those set forth in the Petition for Certiorari, a Writ of Certiorari should be issued to review the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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